

Aspen and Deborah Ragas and Carole Manla. Cases
22-CA-15851, 22-CA-16148, and 22-CA-16060

March 22, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The issue presented here is whether the Board should grant the General Counsel's Motion for Partial Summary Judgment based on the Respondent's alleged failure to file an adequate answer to several allegations in the compliance specification. On April 30, 1990, the Board issued a Decision and Order¹ which, inter alia, ordered the Respondent to reinstate and make whole Judith Votto, Deborah Ragas, Patricia Conoran, and Constance Pasquale for losses resulting from the Respondent's unlawful discrimination against them. On February 15, 1991, the United States Court of Appeals for the Third Circuit entered a judgment enforcing in full the Board's Order.² On July 28, 1992, the Regional Director for Region 22 issued a compliance specification alleging the amount of backpay due the discriminatees and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations.

On September 25, 1992, the Respondent timely filed an answer to the compliance specification. By letter dated December 1, 1992, counsel for the General Counsel informed the Respondent that the answer did not comply with Section 102.56 of the Board's Rules and Regulations. The letter further notified the Respondent that the Regional Office would file a Motion for Partial Summary Judgment if a proper answer was not filed by December 8, 1992.

On January 4, 1993,³ the General Counsel filed with the Board a Motion for Partial Summary Judgment, with exhibits attached. On January 6, 1993, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. On January 29, 1993, the Respondent filed a certification in opposition to notice of Motion for Partial Summary Judgment. It attached to this document an amended answer to the compliance specification.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail as to backpay allegations of specification.*— . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The compliance specification duly served on the Respondent states that, pursuant to Section 102.56 of the Board's Rules and Regulations, the Respondent shall file an answer to the specification and that "[t]o the extent that such answer fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them." Furthermore, the December 1, 1992 letter from counsel for the General Counsel to the Respondent specifically refers to several deficiencies in the answer timely filed by the Respondent and warned that failure to file an answer in conformance with the requirements of Section 102.56 "may result in the filing of a motion for partial summary judgment."

¹ 298 NLRB 1090.

² No. 90-3421.

³ The Board's Order was inadvertently dated January 6, 1992.

In the Motion for Partial Summary Judgment, the General Counsel alleges that the Respondent's original answer fails to comply with the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations as to specificity, except insofar as the Respondent's answer concededly raises the issue of discriminatees' interim earnings. The General Counsel submits that the answer generally disputes the backpay periods in the compliance specification and alleges that certain discriminatees have declined valid offers of reinstatement, but the answer fails to state with requisite specificity any alternative backpay periods, the dates of the alleged offers, and appropriate supporting calculations of gross backpay.

As noted above, the Respondent has filed an amended answer in response to the Notice to Show Cause. We find this amendment to be permissible.⁴ The Respondent has effectively admitted all of the compliance specification's allegations with respect to discriminatee Pasquale. Accordingly, we shall grant the General Counsel's Motion for Partial Summary Judgment for those allegations.

We further find that the amended answer does not raise any litigable issues of fact with respect to the gross backpay of the other three discriminatees. The Respondent concedes the appropriateness of the formula used by the General Counsel to compute gross backpay. It continues to deny, however, the compliance specification's allegation that the backpay period should run until February 27, 1992. Section 102.56(b) mandates that a respondent's answer concerning all matters within its knowledge specifically state the basis for disagreement, setting forth in detail the respondent's position as to the appropriate premises, and furnishing the appropriate supporting figures. To the extent that the Respondent has failed to support its backpay period contentions with specific alternative dates on which the backpay period should end, it has failed to comply with the requirements of Section 102.56(b).

The Respondent does specifically contend that the backpay period of discriminatee Ragas should not extend beyond March 7, 1991, when she was allegedly residing outside the State of New Jersey where Re-

spondent's business is located. With respect to discriminatees Conoran and Votto, the Respondent specifically contends that their backpay period should end on March 27, 1991, when they allegedly informed Respondent that they would never return to the Respondent's employ. These contentions do not, however, raise any issue warranting a hearing. The compliance specification does not allege net backpay for any of the discriminatees in any quarter of the backpay period after the fourth quarter of 1990. Therefore, the amount of backpay owed by the Respondent would not differ from that which is set forth in the compliance specification even if the backpay period terminated in March 1991.

Based on the foregoing, we shall grant the General Counsel's Motion for Partial Summary Judgment and shall direct a hearing limited to issues related to interim earnings.

ORDER

The National Labor Relations Board orders that the Respondent, Westmont Plaza t/a The Aspen, Parsippany, New Jersey, its officers, agents, successors, and assigns, shall make Connie Pasquale whole by paying her the amount of backpay set forth in the compliance specification, plus interest at the appropriate rate, minus tax withholdings required by Federal and state laws.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment be granted on all allegations in the compliance specification about Judith Votto, Deborah Ragas, and Patricia Conoran, except with respect to the issue of their interim earnings.

IT IS FURTHER ORDERED that this proceeding be remanded to the Regional Director for Region 22 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge, which shall be limited to taking evidence concerning the interim earnings of Judith Votto, Deborah Ragas, and Patricia Conoran.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall apply.

⁴The Board has held that, even in the absence of an amended compliance specification, a respondent may amend its answer prior to a hearing in the matter. E.g., *Aquatech, Inc.*, 306 NLRB 975 (1991).